

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0641

**Withholding Tax
Calendar Years 1995, 1996, and 1997**

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ISSUE(S)

I. Withholding Tax – Liability of Employer

Authority: IC 6-3-4-8; 45 IAC 3.1-1-97; IF#86

Taxpayer protests the tax assessed.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer repairs and installs process piping and works both as a general contractor and a sub-contractor.

The audit examination of the taxpayer's books and records, including payroll reports revealed taxable wages for which no withholding tax had been remitted. The taxpayer did not have WH-4's on file during the audit period but W-4's from non-resident employees stating not to withhold Indiana State Income Tax. Withholding tax was assessed against non-residents who failed to file IT-40PNR. A prior audit completed on February 19, 1996 did not bring up this issue.

The audit adjusted withholding tax for payments made to nonresident employees who filed no returns in Indiana.

ISSUE

I. **Withholding Tax** – Liability of Employer

DISCUSSION

Taxpayer failed to withhold tax from nonresident employees' wages and protests the collection of additional State withholding tax.

Taxpayer's only argument is that the prior audit did not raise the issue and if an employee's W-4 stated they were exempt from Indiana tax, it was accepted.

IC 6-3-2-2 clearly defines adjusted gross income derived from sources in the state of Indiana that includes compensation for labor or services rendered within this state. The auditor assessed tax for nonresident employees who filed no returns and who were not residents in reciprocal states.

FINDING

Taxpayer's protest is denied.

ISSUE

II. **Tax Administration** – Interest

Taxpayer protests the imposition of interest.

DISCUSSION

The department has no authority to waive interest.

FINDING

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is denied in issues I. and II.